

# Holland & Knight

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Christopher G. Kelly  
(212) 513-3264  
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February 11, 2016

**Via ECF**

The Honorable William H. Pauley III  
U.S. District Court, Southern District of New York  
Daniel Patrick Moynihan U.S. Courthouse  
500 Pearl Street  
New York, New York 1007-1312

Re: *The Dial Corp. et al. v. News Corp. et al.*  
No. 13-cv-06802 (WHP) (S.D.N.Y.)

Dear Judge Pauley:

We represent non-party Catalina Marketing Corporation. (“Catalina”) in this matter. We write to (i) respond to the misstatements in Defendants’ February 5, 2016 letter and (ii) respectfully request that Defendants’ request for permission to issue a record subpoena to Catalina be denied.

The history may be summarized as follows: in early 2014, moving Defendants served their subpoena on Catalina. Extensive negotiations ensued, and hundreds of documents and a privilege log were produced by Catalina.

In the ensuing months after production, Catalina heard nothing further. In late December of last year, Defendants emailed Catalina requesting that Catalina certify approximately 3,344 pages of documents as business records. *See* Exhibit A. Of the 3,344 pages of documents, only 4 of those pages had actually been produced by Catalina. The remaining 3,340 pages of documents were produced by other unidentified entities and/or gathered from unknown sources. It is this latter category into which the SEC filings, which are the subject of Defendants’ February 5 letter to this Court, fall within.

Given this fact, Catalina repeatedly explained to Defendants that it could either not affirmatively make the “business record exception” representations and/or that it would impose a significant and unreasonable burden on Catalina. Catalina did, however, offer to certify the 4

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pages of documents it had produced, and in fact did so, to the gratitude of counsel. *See* Exhibit B.

Accordingly, Defendants' statement that Catalina has "refused to certify certain of their own documents as authentic business records" is inaccurate.

Defendants have not, nor can they, proffer any plausible basis whatsoever for imposing this unreasonable burden on a non-party such as Catalina. After all, courts routinely take judicial notice of SEC filings. *See Kramer v. Time Warner Inc.*, 937 F.2d 767, 774 (2d Cir. 1991) (SEC filings are subject to judicial notice because, among other reasons, "the documents are required by law to be filed with the SEC, and no serious question as to their authenticity can exist"). And Defendants are free to obtain certified copies of these records themselves directly from the SEC for a \$4 flat fee per record. *See* [https://www.sec.gov/forms/request\\_cert\\_docs](https://www.sec.gov/forms/request_cert_docs).

Catalina has more than satisfied its discovery obligations as non-party and has at all times cooperated with Defendants' counsel. Catalina respectfully requests this court deny the requested relief as to Catalina.

Respectfully submitted,

HOLLAND & KNIGHT LLP

A handwritten signature in black ink, appearing to read "C. G. Kelly", written over the printed name.

Christopher G. Kelly

# **EXHIBIT A**

**From:** Webber, Mitchell D. <mwebber@paulweiss.com>  
**Sent:** Monday, December 28, 2015 11:56 AM  
**To:** Kelly, Christopher (NYC - X73264)  
**Cc:** Michael, William; Loftus, Meghan E.  
**Subject:** Rule 902(11) certification for Catalina  
**Attachments:** Declaration of Custodian of Records Catalina.docx; Catalina - List of Exhibits.pdf

Chris,

As you know, we represent News America Marketing in *The Dial Corp., et al. v. News Corp., et al.*, C.A. No. 1:13-cv-06802 (SDNY). Attached is a proposed certification, pursuant to Federal Rule of Evidence 902(11), that certain documents produced in the *Dial* matter that were created by Catalina meet the requirements of Rule 803(6)'s business records exception to the hearsay rule. You will soon receive a link to download the full set of exhibits by secure file transfer.

Please let us know by January 8, 2016 if Catalina will agree to execute the attached certification so that we do not need to subpoena a custodian of records to testify about the identified documents.

Thank you, Chris, and please let us know if you have any questions.

Sincerely,  
Mitch

**Mitchell D Webber** | Associate  
**Paul, Weiss, Rifkind, Wharton & Garrison LLP**  
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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**THE DIAL CORPORATION,  
HENKEL CONSUMER GOODS INC.  
KRAFT HEINZ FOODS COMPANY,  
H. J. HEINZ COMPANY, L.P.,  
FOSTER POULTRY FARMS,  
SMITHFIELD FOODS, INC.,  
HP HOOD LLC,  
BEF FOODS, INC.,  
SPECTRUM BRANDS, INC.**

**Civ. Action No. 13-CV-06802 (WHP)**

**Individually and On Behalf of  
Similarly Situated Companies  
Plaintiffs,**

**v.**

**NEWS CORPORATION,  
NEWS AMERICA INC.,  
NEWS AMERICA MARKETING FSI LLC,  
NEWS AMERICA MARKETING IN-STORE  
SERVICES, LLC  
Defendants.**

**DECLARATION OF  
CUSTODIAN OF RECORDS**

I, [custodian's name], being duly sworn, depose and say:

1. I am the duly authorized custodian of business records for Catalina Marketing Co. ("Catalina"), located in St. Petersburg, Florida. I am a qualified person familiar with the manner in which business records are kept at Catalina and have authority to certify, pursuant to Federal Rule of Evidence 902(11), that the documents attached as Exhibit 1 through 225 satisfy the requirements of Federal Rule of Evidence 803(6).
2. I have personal knowledge of the facts set forth below.
3. The documents attached as Exhibits 1 through 225 are complete and accurate copies of documents maintained by Catalina in the regular course of its business.
4. The documents attached as Exhibits 1 through 225 (a) were made at or near the

time of the occurrence of the matters set forth therein by, or from information transmitted by, a person with knowledge of those matters; (b) were and are kept in the course of Catalina's regularly conducted business activities; and (c) were made as a regular practice of Catalina's regularly conducted business activities.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated \_\_\_\_\_

\_\_\_\_\_  
[Custodian Name]

## Exhibit List: Catalina Records

Bates	Document Description	Exhibit
	Catalina Marketing Website - About Catalina.	Exhibit 1
	Catalina Marketing Website - Brands and Retailers.	Exhibit 2
	Catalina Marketing Website - CPG - What We Do.	Exhibit 3
	Catalina Marketing Corp. Form 10-K.	Exhibit 4
	Catalina Marketing Corp. Form 10-K.	Exhibit 5
	Catalina Marketing Annual Report.	Exhibit 6
	Catalina Marketing Corporation Form 10-K.	Exhibit 7
	Catalina Marketing Corporation Form 10-K Amendment No. 1.	Exhibit 8
NAM-CPG-022931323	Catalina Marketing Corp. Form 8-K.	Exhibit 9
GSK-NAM00000267	Catalina In-Store Placement Agreement	Exhibit 10
GSK-NAM00000274	Catalina In-Store Placement Agreement	Exhibit 11
GSK-NAM00000282	Catalina In-Store Placement Agreement	Exhibit 12
GSK-NAM00000292	Catalina In-Store Placement Agreement	Exhibit 13
GSK-NAM00000303	Catalina In-Store Placement Agreement	Exhibit 14
GSK-NAM00000313	Catalina In-Store Placement Agreement	Exhibit 15
GSK-NAM00000324	Catalina In-Store Placement Agreement	Exhibit 16
GSK-NAM00000334	Catalina In-Store Placement Agreement	Exhibit 17
GSK-NAM00000347	Catalina In-Store Placement Agreement	Exhibit 18
GSK-NAM00000357	Catalina In-Store Placement Agreement	Exhibit 19
GSK-NAM00000364	Catalina In-Store Placement Agreement	Exhibit 20
GSK-NAM00000371	Catalina In-Store Placement Agreement	Exhibit 21
GSK-NAM00000381	Catalina In-Store Placement Agreement	Exhibit 22
GSK-NAM00000391	Catalina In-Store Placement Agreement	Exhibit 23
PEP 0705.003225	Catalina In-Store Placement Agreement with H.J. Heinz Company	Exhibit 24
PEP 0705.004905	Catalina In-Store Placement Agreement with H.J. Heinz Company	Exhibit 25
PEP 0705.004941	Catalina In-Store Placement Agreement with H.J. Heinz Company	Exhibit 26
PEP 0705.004945	Catalina In-Store Placement Agreement with H.J. Heinz Company	Exhibit 27
VCP00104082 - VCP00104106	Catalina Agreement with Masterfoods USA.	Exhibit 28
VCP00104294 - VCP00104312	Catalina Agreement with Masterfoods USA.	Exhibit 29
VCP00104710 - VCP00104733	Catalina Agreement with Masterfoods USA.	Exhibit 30
VCP00104735 - VCP00104759	Catalina Agreement with Masterfoods USA.	Exhibit 31
VCP00104853 - VCP00104871	Catalina Agreement with Masterfoods USA.	Exhibit 32
VCP00109854 - VCP00109874	Catalina Agreement with Masterfoods USA, Inc.	Exhibit 33
VCP00110083 - VCP00110102	Catalina Agreement with Masterfoods USA.	Exhibit 34
VCP00113073 - VCP00113093	Catalina Agreement with Masterfoods USA.	Exhibit 35
VCP00113097 - VCP00113115	Catalina Agreement with Masterfoods USA.	Exhibit 36
VCP00114112 - VCP00114131	Catalina Agreement with Masterfoods USA.	Exhibit 37
VCP00128268 - VCP00128287	Catalina Agreement with Masterfoods USA.	Exhibit 38
VCP00139400 - VCP00139419	Catalina Agreement with Masterfoods USA.	Exhibit 39
VCP00139431 - VCP00139450	Catalina Agreement with Masterfoods USA.	Exhibit 40
VCP00160453 - VCP00160477	Catalina Agreement with Masterfoods USA.	Exhibit 41
VCP00160480 - VCP00160504	Catalina Agreement with Masterfoods USA.	Exhibit 42
VCP00160507 - VCP00160531	Catalina Agreement with Masterfoods USA.	Exhibit 43
VCP00160533 - VCP00160553	Catalina Agreement with Masterfoods USA.	Exhibit 44
VCP00160556 - VCP00160579	Catalina Agreement with Masterfoods USA.	Exhibit 45
VCP00184444	Catalina In-Store Placement Agreement	Exhibit 46
VCP00184700	Catalina In-Store Placement Agreement	Exhibit 47
VCP00184710	Catalina In-Store Placement Agreement	Exhibit 48
VCP00184792	Catalina In-Store Placement Agreement	Exhibit 49
VCP00184802	Catalina In-Store Placement Agreement	Exhibit 50
VCP00185106	Catalina In-Store Placement Agreement	Exhibit 51
VCP00185133	Catalina In-Store Placement Agreement	Exhibit 52
VCP00185147	Catalina In-Store Placement Agreement	Exhibit 53
VCP00185191	Catalina In-Store Placement Agreement	Exhibit 54

Bates	Document Description	Exhibit
VCP00185213	Catalina In-Store Placement Agreement	Exhibit 55
VCP00185248	Catalina In-Store Placement Agreement	Exhibit 56
VCP00185363	Catalina In-Store Placement Agreement	Exhibit 57
VCP00185375	Catalina In-Store Placement Agreement	Exhibit 58
VCP00185379	Catalina In-Store Placement Agreement	Exhibit 59
VCP00185397	Catalina In-Store Placement Agreement	Exhibit 60
VCP00185413	Catalina In-Store Placement Agreement	Exhibit 61
VCP00185425	Catalina In-Store Placement Agreement	Exhibit 62
VCP00185437	Catalina In-Store Placement Agreement	Exhibit 63
VCP00185455	Catalina In-Store Placement Agreement	Exhibit 64
VCP00185461	Catalina In-Store Placement Agreement	Exhibit 65
VCP00185510	Catalina In-Store Placement Agreement	Exhibit 66
VCP00185554	Catalina In-Store Placement Agreement	Exhibit 67
VCP00185565	Catalina In-Store Placement Agreement	Exhibit 68
VCP00185612	Catalina In-Store Placement Agreement	Exhibit 69
VCP00185627	Catalina In-Store Placement Agreement	Exhibit 70
VCP00185662	Catalina In-Store Placement Agreement	Exhibit 71
VCP00185673	Catalina In-Store Placement Agreement	Exhibit 72
VCP00185687	Catalina In-Store Placement Agreement	Exhibit 73
VCP00185713	Catalina In-Store Placement Agreement	Exhibit 74
VCP00185755	Catalina In-Store Placement Agreement	Exhibit 75
VCP00185766	Catalina In-Store Placement Agreement	Exhibit 76
VCP00185780	Catalina In-Store Placement Agreement	Exhibit 77
VCP00185818	Catalina In-Store Placement Agreement	Exhibit 78
VCP00185840	Catalina In-Store Placement Agreement	Exhibit 79
VCP00197597	Catalina In-Store Placement Agreement	Exhibit 80
VCP00197701	Catalina In-Store Placement Agreement	Exhibit 81
VCP00197765	Catalina In-Store Placement Agreement	Exhibit 82
VCP00197781	Catalina In-Store Placement Agreement	Exhibit 83
VCP00622600	Catalina In-Store Placement Agreement	Exhibit 84
VCP00622614	Catalina In-Store Placement Agreement	Exhibit 85
VCP00622630	Catalina In-Store Placement Agreement	Exhibit 86
VCP00622642	Catalina In-Store Placement Agreement	Exhibit 87
VCP00622653	Catalina In-Store Placement Agreement	Exhibit 88
VCP00622665	Catalina In-Store Placement Agreement	Exhibit 89
VCP00622676	Catalina In-Store Placement Agreement	Exhibit 90
VCP00622688	Catalina In-Store Placement Agreement	Exhibit 91
VCP00622718	Catalina In-Store Placement Agreement	Exhibit 92
VCP00622734	Catalina In-Store Placement Agreement	Exhibit 93
VCP00622750	Catalina In-Store Placement Agreement	Exhibit 94
VCP00622773	Catalina In-Store Placement Agreement	Exhibit 95
VCP00622791	Catalina In-Store Placement Agreement	Exhibit 96
VCP00622798	Catalina In-Store Placement Agreement	Exhibit 97
VCP00622823	Catalina In-Store Placement Agreement	Exhibit 98
VCP00622833	Catalina In-Store Placement Agreement	Exhibit 99
VCP00622847	Catalina In-Store Placement Agreement	Exhibit 100
VCP00622888	Catalina In-Store Placement Agreement	Exhibit 101
VCP00622899	Catalina In-Store Placement Agreement	Exhibit 102
VCP00622928	Catalina In-Store Placement Agreement	Exhibit 103
VCP00622948	Catalina In-Store Placement Agreement	Exhibit 104
VCP00622950	Catalina In-Store Placement Agreement	Exhibit 105
VCP00622971	Catalina In-Store Placement Agreement	Exhibit 106
VCP00622990	Catalina In-Store Placement Agreement	Exhibit 107
VCP00623019	Catalina In-Store Placement Agreement	Exhibit 108
VCP00623038	Catalina In-Store Placement Agreement	Exhibit 109
VCP00623052	Catalina In-Store Placement Agreement	Exhibit 110
VCP00623071	Catalina In-Store Placement Agreement	Exhibit 111
VCP00623084	Catalina In-Store Placement Agreement	Exhibit 112
VCP00623099	Catalina In-Store Placement Agreement	Exhibit 113
VCP00623115	Catalina In-Store Placement Agreement	Exhibit 114
VCP00623137	Catalina In-Store Placement Agreement	Exhibit 115
VCP00623150	Catalina In-Store Placement Agreement	Exhibit 116
VCP00623169	Catalina In-Store Placement Agreement	Exhibit 117
VCP00623184	Catalina In-Store Placement Agreement	Exhibit 118
VCP00623201	Catalina In-Store Placement Agreement	Exhibit 119
VCP00623239	Catalina In-Store Placement Agreement	Exhibit 120
VCP00623275	Catalina In-Store Placement Agreement	Exhibit 121
VCP00623294	Catalina In-Store Placement Agreement	Exhibit 122
VCP00623305	Catalina In-Store Placement Agreement	Exhibit 123



[illegible]

Bates	Document Description	Exhibit
VCP00624611	Catalina In-Store Placement Agreement	Exhibit 193
VCP00624623	Catalina In-Store Placement Agreement	Exhibit 194
VCP00624635	Catalina In-Store Placement Agreement	Exhibit 195
VCP00624655	Catalina In-Store Placement Agreement	Exhibit 196
VCP00624667	Catalina In-Store Placement Agreement	Exhibit 197
VCP00624681	Catalina In-Store Placement Agreement	Exhibit 198
VCP00624694	Catalina In-Store Placement Agreement	Exhibit 199
VCP00624707	Catalina In-Store Placement Agreement	Exhibit 200
VCP00624722	Catalina In-Store Placement Agreement	Exhibit 201
VCP00624733	Catalina In-Store Placement Agreement	Exhibit 202
VCP00624748	Catalina In-Store Placement Agreement	Exhibit 203
VCP00624761	Catalina In-Store Placement Agreement	Exhibit 204
VCP00624774	Catalina In-Store Placement Agreement	Exhibit 205
VCP00624793	Catalina In-Store Placement Agreement	Exhibit 206
VCP00624805	Catalina In-Store Placement Agreement	Exhibit 207
VCP00624817	Catalina In-Store Placement Agreement	Exhibit 208
VCP00624833	Catalina In-Store Placement Agreement	Exhibit 209
VCP00624845	Catalina In-Store Placement Agreement	Exhibit 210
VCP00624855	Catalina In-Store Placement Agreement	Exhibit 211
VCP00624866	Catalina In-Store Placement Agreement	Exhibit 212
VCP00624880	Catalina In-Store Placement Agreement	Exhibit 213
VCP00624896	Catalina In-Store Placement Agreement	Exhibit 214
VCP00624907	Catalina In-Store Placement Agreement	Exhibit 215
VCP00624923	Catalina In-Store Placement Agreement	Exhibit 216
VCP00624941	Catalina In-Store Placement Agreement	Exhibit 217
VCP00624951	Catalina In-Store Placement Agreement	Exhibit 218
VCP00624965	Catalina In-Store Placement Agreement	Exhibit 219
VCP00624979	Catalina In-Store Placement Agreement	Exhibit 220
VCP00624996	Catalina In-Store Placement Agreement	Exhibit 221
VCP00625007	Catalina In-Store Placement Agreement	Exhibit 222
VCP00625014	Catalina In-Store Placement Agreement	Exhibit 223
VCP00625024	Catalina In-Store Placement Agreement	Exhibit 224
CATALINA-150224-0000002	Catalina Website - News America - salesforce.com - Unlimited Edition.	Exhibit 225

# **EXHIBIT B**

**From:** Webber, Mitchell D. [mailto:mwebber@paulweiss.com]  
**Sent:** Wednesday, February 03, 2016 10:45 PM  
**To:** Kelly, Christopher (NYC - X73264) <Christopher.Kelly@hklaw.com>  
**Subject:** RE: Catalina certification

Chris, thanks so much.

Best,  
Mitch

**Mitchell D Webber** | Associate  
**Paul, Weiss, Rifkind, Wharton & Garrison LLP**  
2001 K Street, NW | Washington, DC 20006-1047  
(202) 223-7359 (Direct Phone) | (202) 315-3973 (Direct Fax)  
[mwebber@paulweiss.com](mailto:mwebber@paulweiss.com) | [www.paulweiss.com](http://www.paulweiss.com)

**From:** [Christopher.Kelly@hklaw.com](mailto:Christopher.Kelly@hklaw.com) [mailto:Christopher.Kelly@hklaw.com]  
**Sent:** Wednesday, February 03, 2016 3:54 PM  
**To:** Webber, Mitchell D. <[mwebber@paulweiss.com](mailto:mwebber@paulweiss.com)>  
**Subject:** RE: Catalina certification

Mitch: here you go, good luck. Edited slightly to reflect the reality that exists at Catalina. Best, Chris.

**Christopher Kelly** | **Holland & Knight**  
Partner  
Holland & Knight LLP  
31 West 52nd Street | New York, NY 10019

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christopher.kelly@hklaw.com | www.hklaw.com

cc: Mitchell D. Webber

**From:** Webber, Mitchell D. [mailto:mwebber@paulweiss.com]  
**Sent:** Wednesday, February 03, 2016 11:00 AM  
**To:** Kelly, Christopher (NYC - X73264) <Christopher.Kelly@hklaw.com>  
**Subject:** RE: Catalina certification

Chris, I wanted to check in with you. Are we still on track to get the cert. for the one document?

Thank you again,  
Mitch

Mitchell D Webber | Associate  
Paul, Weiss, Rifkind, Wharton & Garrison LLP  
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**From:** Webber, Mitchell D.  
**Sent:** Wednesday, January 27, 2016 9:40:07 AM  
**To:** [Christopher.Kelly@hklaw.com](mailto:Christopher.Kelly@hklaw.com)  
**Subject:** Catalina certification

Chris,

We'd like to take your client up on its agreement to certify the document it produced (formerly "Exhibit 24"). I've modified the declaration and exhibit accordingly.

I don't want to impose, but would it be possible for Catalina to get this back to us today?

Thanks so much,  
Mitch

Mitchell D Webber | Associate  
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